Alagamah a/p Ponniah & Ors v Theresa a/p Mariasoosay & Ors

HIGH COURT (SEREMBAN) — CIVIL SUIT NO NA22NCVC-26–06 OF 2020
AZIZUL AZMI ADNAN J
24 FEBRUARY 2023

Succession — Distribution of estate — Intestacy — Deceased died intestate and had no issue — Brother of deceased predeceased intestate — Plaintiffs as wife and children of deceased's brother claimed to be entitled to estate of deceased and sought declaration that first and second defendants were not lawful heirs of estate of deceased — Whether first and second defendants were entitled to estate — Whether plaintiffs were entitled to estate — Distribution Act 1958 ss 5, 6(1)(h), (i), 7(1) & (2)

The plaintiffs sought, among others, to be declared the lawful heirs of one Mdm Papoo Pelany ('Mdm Papoo') and to be declared the beneficiaries of her estate. The first plaintiff was married to Madam Papoo's brother, one Mr Joseph Palany ('Mr Joseph'). Mr Joseph had pre-deceased Mdm Papoo. The second to fourth plaintiffs were the children of the first plaintiff and Mr Joseph. In other words, the first plaintiff was the sister-in-law of Mdm Papoo, while the other plaintiffs were her nieces and nephew. Both Mr Joseph and Mdm Papoo were the issue from the marriage of Mr Palany and Mdm Saveriamah Sennapan ('Mdm Saveriamah'). Mdm Saveriamah had previously married to one Mr Mariasoosay. The first and second defendants were the issue from this marriage. Mdm Papoo had never married, had no issue and died intestate. The first defendant obtained letters of administration to administer the estate of Mdm Papoo. The third defendant was the solicitor who had attended to the court application. The plaintiffs claimed to be entitled to the estate of the deceased and alleged that they had never appointed the third defendant to obtain letters of administration. They also sought a declaration to the effect that the first and second defendants were not the lawful heirs of the estate of Mdm Papoo.

Held, dismissing the claim with costs of RM15,000:

(1) The first and second defendants were half-siblings of Mdm Papoo. For the purposes of the Distribution Act 1958 ('the Act'), half-siblings were to be treated as though they were brothers and sisters, by reason of s 5 of the Act (see para 13).

(2) The first plaintiff, being the surviving spouse of Mr Joseph, had no claim or entitlement over the estate of Mdm Papoo because her husband had

predeceased his sister and the first plaintiff did not come within any of the categories under s 7 of the Act. Section 7(1) of the Act which dealt with the entitlements of the issue of the intestate, must be read together with s 6(1)(h) of the Act. On the other hand, s 7(2) of the Act which dealt with the entitlements of 'any class of relatives of the deceased other than the issue of the intestate', must be read together with s 6(1)(i) of the Act. A key operative difference between ss 6(1)(h) and 6(1)(i) of the Act lied in the words 'living at the death of the intestate', which appeared in the latter provision but not the former. Thus, if s 7(2) of the Act was applied to ascertain the entitlement of the children of a brother to the intestate, the children may only become entitled if their father was alive at the time the intestate died. Only persons who were alive at the time of the death of the intestate may have an interest in the estate of the intestate pursuant to s 6(1)(i) of the Act. In the circumstances, none of the plaintiffs were entitled to any share in the distribution of the estate of Mdm Papoo (see paras 15, 17–20, 23 & 28).

[**Bahasa Malaysia summary**

Plaintif memohon, antara lain, untuk diisytiharkan sebagai waris yang sah kepada seorang Mdm Papoo Pelany ('Mdm Papoo') dan diisytiharkan sebagai benefisiari harta pusakanya. Plaintif pertama telah berkahwin dengan abang Mdm Papoo, seorang Mr Joseph Palany ('Mr Joseph'). Mr Joseph telah meninggal dunia sebelum Mdm Papoo meninggal dunia. Plaintif kedua hingga keempat ialah anak kepada plaintif pertama dan Mr Joseph. Dalam erti kata lain, plaintif pertama ialah kakak ipar kepada Mdm Papoo, manakala plaintif lain adalah anak saudara perempuan dan anak saudara lelakinya. Kedua-dua Mr Joseph dan Mdm Papoo adalah anak daripada perkahwinan Mr Palany dan Mdm Saveriamah Sennapan ('Mdm Saveriamah'). Mdm Saveriamah sebelum ini telah berkahwin dengan seorang Mr Mariasoosay. Defendan pertama dan kedua adalah anak daripada perkahwinan ini. Mdm Papoo tidak pernah berkahwin, tidak mempunyai anak dan meninggal dunia tanpa wasiat. Defendan pertama memperoleh surat pentadbiran untuk mentadbir harta pusaka Mdm Papoo. Defendan ketiga ialah peguam yang telah menghadiri permohonan mahkamah. Plaintif mendakwa berhak ke atas harta pusaka si mati dan mendakwa mereka tidak pernah melantik defendan ketiga untuk mendapatkan surat pentadbiran. Mereka juga memohon pengisytiharan yang menyatakan bahawa defendan pertama dan kedua bukanlah waris sah harta pusaka Mdm Papoo.

Diputuskan, menolak tuntutan dengan kos RM15,000:

(1) Defendan pertama dan kedua ialah adik-beradik tiri kepada Mdm Papoo. Bagi tujuan Akta Pembahagian 1958 ('Akta'), adik-beradik tiri harus dilayan seolah-olah mereka adalah adik beradik, oleh kerana s 5 Akta (lihat perenggan 13).

(2) Plaintif pertama, iaitu pasangan Mr Joseph yang masih hidup, tidak mempunyai tuntutan atau hak ke atas harta pusaka Mdm Papoo kerana suaminya telah meninggal dunia sebelum kakaknya dan plaintif pertama tidak termasuk dalam mana-mana kategori di bawah s 7 Akta. Seksyen 7(1) Akta yang memperkatakan tentang kelayakan anak tidak berwasiat, mesti dibaca bersama s 6(1)(h) Akta. Sebaliknya, s 7(2) Akta yang memperkatakan tentang hak 'mana-mana kelas saudara si mati selain daripada anak tidak berwasiat', mesti dibaca bersama s 6(1)(i) Akta. Perbezaan operasi utama antara ss 6(1)(h) dan 6(1)(i) Akta terletak pada perkataan 'hidup semasa kematian orang yang tidak berwasiat', yang terdapat dalam peruntukan yang kedua tetapi bukan yang pertama. Oleh itu, jika s 7(2) Akta digunakan untuk memastikan hak anak-anak saudara kepada tidak berwasiat, anak-anak itu hanya boleh mendapat hak jika bapa mereka masih hidup pada masa yang tidak berwasiat itu meninggal dunia. Hanya orang yang masih hidup pada masa kematian orang yang tidak berwasiat boleh mempunyai kepentingan dalam harta pusaka yang tidak berwasiat menurut s 6(1)(i) Akta. Dalam keadaan tersebut, tiada seorang pun daripada plaintif berhak mendapat sebarang bahagian dalam pembahagian harta pusaka Mdm Papoo (lihat perenggan 15, 17–20, 23 & 28).]

Cases referred to

Gan Cheng Khuan v Gan Kah Yang & Ors [2018] MLJU 1363, CA (folld)
Paralogavathy Veerasingam v Sajana Rajasingam (31NCVC-37–02 of 2017) (unreported) (refd)

Legislation referred to

Distribution Act 1958 ss 5, 6, 6(1)(e), (1)(h), (1)(i), 7, 7(1), (2)

Shanti Suppiah (Shanti & Co) for the plaintiff.
Sundra Murtti (Sundra Murtti & Co) for the defendant.

Azizul Azmi Adnan J:

INTRODUCTION

[1] The plaintiffs in this case sought, among others, to be declared the lawful heirs of one Madam Papoo Pelany and to be declared the beneficiaries of her estate.

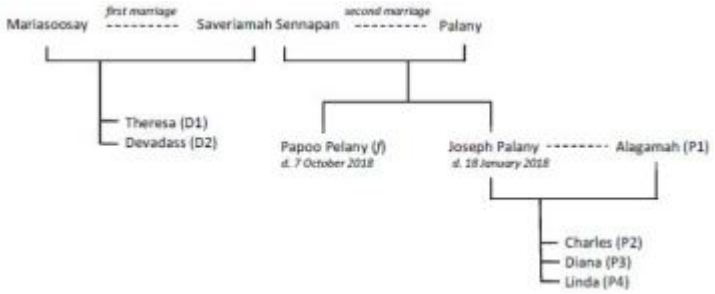
Background facts

[2] The first plaintiff was married to Madam Papoo's brother, one Joseph Palany. Mr Joseph Palany had pre-deceased his sister, Madam Papoo.

[3] The second to fourth plaintiffs are the children of the first plaintiff and Mr Joseph Palany. In other words, the first plaintiff was the sister-in-law of the deceased Madam Papoo, while the other plaintiffs were her nieces and nephew.

[4] Both Joseph Palany and Papoo Pelany were the issue from the marriage of Mr Palany and one Saveriamah Sennapan. Madam Saveriamah had previously married to one Mr Mariasoosay. The first and second defendants are the issue from this marriage.

[5] The relevant relationships are represented diagrammatically as follows:



[6] Madam Papoo died intestate. She had never married, and had no issue.

[7] The facts narrated above are not in dispute between the parties and have been set out in the list of agreed facts prepared for the purposes of trial (see encl 30).

[8] On 25 June 2019, the first defendant obtained letters of administration to administer the estate of Madam Papoo. The third defendant was the solicitor who had attended to the court application.

The plaintiffs' case

[9] The plaintiffs claimed to be entitled to the estate of the deceased and alleged that they had never appointed the third defendant to obtain letters of administration. They also sought a declaration to the effect that the first and second defendants were not the lawful heirs of the estate of Madam Papoo.

At trial

[10] The first and second plaintiffs testified at trial. At the conclusion of the plaintiff's case, the learned counsel for defendants made a plea of no case to answer on a point of law. The defendants' position was that, even if the

allegations of the plaintiffs were true, the plaintiffs were not entitled to any share in the estate of Madam Papoo because — based on the undisputed agreed facts of this case — Mr Joseph Palany had pre-deceased Madam Papoo, and therefore persons claiming through him were not entitled to her estate.

ANALYSIS

[11] The principles of succession applying to a non-Muslim are set out in s 6 of the Distribution Act 1958, sub-s (1) of which reads as follows:

> Section 6. Succession to intestate estates.
>
> (1) After the commencement of this Act, if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section 4, be distributed in the manner or be held on the trusts mentioned in this section, namely —
>
> (a) if an intestate dies leaving a spouse and no issue and no parent or parents, the surviving spouse shall be entitled to the whole of the estate;
>
> (b) if an intestate dies leaving no issue but a spouse and a parent or parents, the surviving spouse shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half;
>
> (c) if an intestate dies leaving issue but no spouse and no parent or parents, the surviving issue shall be entitled to the whole of the estate;
>
> (d) if an intestate dies leaving no spouse and no issue but a parent or parents, the surviving parent or parents shall be entitled to the whole of the estate;
>
> (e) if an intestate dies leaving a spouse and issue but no parent or parents, the surviving spouse shall be entitled to one-third of the estate and the issue the remaining two-thirds;
>
> (f) if an intestate dies leaving no spouse but issue and a parent or parents, the surviving issue shall be entitled to two-thirds of the estate and the parent or parents the remaining one-third;
>
> (g) if an intestate dies leaving a spouse, issue and parent or parents, the surviving spouse shall be entitled to one-quarter of the estate, the issue shall be entitled to one-half of the estate and the parent or parents the remaining one-quarter;
>
> (h) subject to the rights of a surviving spouse or a parent or parents, as the case may be, the estate of an intestate who leaves issue shall be held on the trusts set out in section 7 for the issue;
>
> (i) if an intestate dies leaving no spouse, issue, parent or parents, the whole of the estate of the intestate shall be held on trusts for the following persons living at the death of the intestate and in the following order and manner, namely:

> Firstly, on the trusts set out in section 7 for the brothers and sisters of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then
>
> Secondly, for the grandparents of the intestate, and if more than one survive the intestate in equal shares absolutely; but if there are no grandparents surviving, then
>
> Thirdly, on the trusts set out in section 7 for the uncles and aunts of the intestate in equal shares; but if no person takes an absolutely vested interest under such trusts, then
>
> Fourthly, for the great grandparents of the intestate and if more than one survive the intestate in equal shares absolutely; but if there are no such great grandparents surviving, then
>
> Fifthly, on the trusts set out in section 7 for the great grand uncles and great grand aunts of the intestate in equal shares.
>
> In default of any person taking an absolute interest under the foregoing provisions the Government shall be entitled to the whole of the estate except insofar as the same consists of land.

[12] Of particular relevance is s 6(1)(i), which applies where the intestate leaves no spouse, issue or parents. In such a case, the estate is to be held on trust, firstly for the benefit of the brothers and sisters who were living at the time of death of the intestate.

The entitlement of the first and second defendants

[13] In the facts of the present case, the first and second defendants share a mother with the late Madam Papoo. Their mother was the late Madam Saveriamah Sennapan. In other words, the first and second defendants are the half-siblings of Madam Papoo. For the purposes of the Distribution Act 1958, half siblings are to be treated as though they are brothers and sisters, by reason of s 5, which provides as follows:

> Section 5 Persons held to be similarly related to deceased.
>
> For the purpose of distribution under this Act, there shall be no distinction between those who are related to the deceased person through his father and those who are related to him through his mother, nor between those who are related to him by the full blood and those who are related by the half blood, nor between those who were actually born in his lifetime and those who at the date of his death were only conceived in the womb but who have subsequently been born alive.

The entitlement of the plaintiffs

[14] The more vexed question relates to the entitlement of the second to fourth plaintiffs, as the authorities do no appear to be in agreement on the legal position.

[15] The position of the first plaintiff, though, is tolerably clear. It is beyond question that Madam Alagamah, being the surviving spouse of Mr Joseph Palany, has no claim or entitlement over the estate of her deceased sister-in-law. She would only have a claim over the estate of her late husband (pursuant to s 6(1)(e) of the Distribution Act 1958). She cannot claim to be entitled to the estate of Madam Papoo, because her husband had predeceased his sister and because Madam Alagamah does not come within any of the categories under s 7.

[16] The provisions of ss 7(1) and 7(2) bear close examination. They read as follows:

> Section 7 Trusts in favour of issue and other classes of relatives of intestate.
>
> (1) Where under the provisions of section 6, the estate of an intestate or any part thereof is directed to be held on the trusts set out in this section for the issue of the intestate, the same shall be held in trust in equal shares if more than one for all or any of the children or child of the intestate living at the death of the intestate, who attain the age of majority or marry under that age, and for all or any of the issue living at the death of the intestate, who attain the age of majority or marry under that age, of any child of the intestate who predeceases the intestate, such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is still living at the death of the intestate and so capable of taking.
>
> (2) Where under section 6 the estate of an intestate or any part thereof is directed to be held on the trusts set out in this section for any class of relatives of the deceased other than issue of the intestate, the same shall be held on trusts corresponding to the trusts set out in subsection (1) of this section for the issue of the intestate as if such trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

[17] Section 7(1) deals with the entitlements of the issue of the intestate. The children of the intestate take equal shares in the estate of the intestate, provided that they are living at the time of the death of the intestate and provided further that they have attained the age of majority or have married before the age of majority. Exceptionally, the issue of any child of the intestate who had predeceased the intestate could claim up to the entitlement of the parent. Thus, by way of illustration, if Albert had died intestate and had had two children: Billy and Charlie. Charlie had however predeceased Albert. Charlie has two living children, Dorothy and Edward. By the proper operation of s 7(1), Dorothy and Edward would each be entitled to a quarter share of Albert's estate, because their father, Charlie, would have been entitled to a half share had he been alive at the time of Albert's death. Dorothy and Edward would be

so entitled even though they claim through Charlie, who had predeceased his own father.

[18] It may be observed that s 7(1) must be read together with s 6(1)(h), which provides for the entitlements of the issue of the intestate.

[19] Section 7(2), on the other hand, deals with the entitlements of 'any class of relatives of the deceased other than the issue of the intestate'. This is the provision with which we are concerned for the present purposes. Section 7(2) must be read together with s 6(1)(i), which deals with the situation where the intestate has no surviving spouse, issue or parent.

[20] A key operative difference between s 6(1)(h) and 6(1)(i) lies in the words 'living at the death of the intestate', which appears in the latter provision but not the former. Thus, if s 7(2) is applied to ascertain the entitlement of the children of a brother to the intestate, the children may only become entitled if their father (being the brother of the intestate) was alive at the time the intestate died.

[21] This was precisely the scenario in the Court of Appeal case of *Gan Cheng Khuan v Gan Kah Yang & Ors* [2018] MLJU 1363. In that case, the appellant, Gan Cheng Khuan, was the administrator of the estate of his late father, Gan Cheng Keong. Gan Cheng Keong's eldest brother, Gan Cheng Yee, had predeceased him. The question arose as to whether the children of Gan Cheng Yee (being the respondents in that case) could claim in the estate of Gan Cheng Keong.

[22] The Court of Appeal was of view that they could not, holding as follows:

> [21] Now coming to the provisions of the Act itself, under sub-s 6(1)(i) of the Act, if an intestate dies leaving no spouse, issue, parents or a parent, the whole of the estate of the intestate shall be held on trust for the following persons living at the death of the intestate and in the following order and manner, namely: firstly for the brothers and sisters of the intestate in equal shares, then for the grandparents and so on. The emphasis is on the words 'living at the death of the intestate': see *HSBC (M) Trustee Bhd v Kong Kim Hoh & Ors* [1999] 3 MLJ 383.
>
> [22] In this appeal, the father of the respondents died on 27 January 1979 and was no longer living on 27 March 2009, at the death of the intestate. Their late father did not qualify under 'the brothers and sisters of the intestate who were living at the death of the intestate' pursuant to sub-s 6(1)(i) of the Act. Therefore the respondents cannot take under their late father's share in the estate of the intestate under sub-s 6(1)(i).
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> [23] The respondents had tried to come under sub-s 7(1). Subsection (1) deals with trusts to be held for the issue of the intestate whereas sub-s 7(2) provides for trusts

in favour of other classes of relatives of the intestate. Both subsections of s 7 specifically refer to s 6 of the Act which means that both ss 6 and 7 and must be read together. It is not in dispute that the Respondents are not the issue of the intestate but are the nephews of the intestate which come within 'other classes of relatives' of the intestate. If they are taking a share under their late father's entitlement in the estate of the intestate under s 7 of the Act, they are caught by sub-s 6(1)(i).

[23] There is thus clear and binding authority for the principle that only persons who were alive at the time of the death of the intestate may have an interest in the estate of the intestate pursuant to s 6(1)(i) of the Distribution Act 1958.

[24] Learned counsel for the plaintiffs cited the unreported judgment in the case of *Paralogavathy Veerasingam v Sajana Rajasingam* (31NCVC-37–02 of 2017) (unreported) involving the estate of the former judge, VT Singham. He died intestate, never having married nor leaving behind any children. He had six siblings, three of whom had predeceased him. The children of those siblings who had died earlier made an application to intervene in the originating summons filed by the surviving siblings to obtain letters of administration.

[25] The High Court at Ipoh allowed the application for intervention, holding that, on a true construction of s 7(2) of the Distribution Act 1958, the interveners were entitled to claim in the estate of the late VT Singham even though they claimed through his siblings who had predeceased him.

[26] One of the surviving siblings appealed against this determination. The appeal was dismissed by the Court of Appeal without any grounds having been subsequently issued.

[27] I am of the view that this court is bound by the decision of the Court of Appeal in *Gan Cheng Khuan v Gan Kah Yang*. Because no grounds of judgment were issued in *Pulogasingam Veerasingam*'s appeal, I was unable to determine the basis upon which the court had made its determination in the appeal. In any event, as rightly pointed by counsel for the defendant before me, that case merely involved an intervener application, and had made no final determination on the entitlements of the interveners.

[28] For the reasons explained above, I am of the view that none of the plaintiffs were in fact entitled to any share in the distribution of the estate of the late Madam Papoo Pelany, and that accordingly the entirety of the plaintiffs' claim ought to be dismissed with costs of RM15,000, such costs to be subject to an allocatur.

Claim dismissed with costs of RM15,000.

Reported by Nabilah Syahida Abdullah Salleh